

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

James W. Quinn

Petitioners-Appellants,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1202
Parcel No. 04106-000-000**

On February 18, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, James W. Quinn, was self-represented and submitted evidence in support of his petition. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its legal representative. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

James W. Quinn is the owner of a residentially classified property located at 847 Oak Park Avenue, Des Moines, Iowa. The property consists of a 7000 square-foot site improved with a one-and-a-half story home built in 1916, containing 1223 total square feet of living area on the main and second levels, and a 728 square-foot, unfinished basement. Additional features include a two-car detached garage, as well as front and rear enclosed porches. The property has a January 1, 2009, assessment of \$88,500, representing \$16,400 in land value and \$72,100 in improvement value.

Quinn protested to the Polk County Board of Review regarding the 2009 assessment for this parcel. The protest was based on the following grounds: 1) The property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), stating that the property had a total

value of \$60,000; and 2) There has been a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied the protest.

Quinn then appealed to this Board, reasserting his original claims. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

In his petition to the Board of Review, Quinn submitted a letter dated April 28, 2009, that referenced one property located at 819 Oak Park Avenue, which he considered comparable to the subject property. In his appeal to this Board, Quinn provided four additional properties he also considers comparable. Quinn provided web-page print-outs from the Polk County Assessor's site for all five of these properties.

The five properties Quinn considered were: 720 Ovid Avenue; 922 E Euclid Avenue; 1001 Oak Park Avenue; 629 Oak Park Avenue; and 819 Oak Park Avenue. All five of these properties have questionable transfer histories, which were noted on the print-outs. Several of the properties appeared to be either bank-owned when sold; or had multiple sales in a short period of time, which appear to be investor-related transactions. Quinn believes his property is over-assessed; however, his testimony regarding these properties pointed towards an argument of inequity. Inequity was not a ground considered by either the Board of Review or this Board.

Quinn asserts the properties he presented show assessments are above selling prices in the area. We disagree. As the sales presented are not believed to represent arms-length transactions, we cannot conclude the sales prices reasonably reflect market transactions.

When asked if he had any recent appraisals completed on his property, Quinn said he did not. When asked how he had determined a total value of \$60,000, Quinn explained his primary consideration was the recent sale and assessed value of 819 Oak Park Avenue.

The property at 819 Oak Park has an assessed land value of \$18,700. The site is one-and-a-half times larger than Quinn's site, which he contends would indicate a land value of roughly \$12,500 for his property. He testified to this conclusion using the following calculation:

$$\$18,700/1.5 = \$12,466 \text{ (rounded to } \$12,500\text{)}$$

Additionally, he claims his site is a less-appealing corner lot, therefore reducing the site value to \$12,000.

Quinn arrived at the dwelling value by figuring the following: he took 1644, which is the total square feet of living area reported on the assessor's property record card for 819 Oak Park, and divided that into the \$71,900 building value. He then used this dollar per square foot and multiplied it by his property's total living area to arrive at the improvement value. This coupled with the site value, he asserted, results in a total value of close to \$60,000. The actual calculation based upon this testimony is as follows:

$$\$71,900/1644 = \$43.73 \times 1233 = \$53,482 + 12,000 = \$65,481$$

While it is evident that Quinn gave significant thought and rationale to this conclusion, we find the analysis falls short. Although there is no legal obligation requiring more than one comparable property for a market value opinion, we feel it does limit the reliability of this approach to value, because, as a residential dwelling, it is not an uncommon type of property.

Quinn provided a market value appraisal on 819 Oak Park as part of his original petition to the Board of Review. We do not consider this appraisal relevant, as it does not reflect the value of the subject property, which is the focus of this appeal; and because there was no comparison between 819 Oak Park and the subject property.

Quinn also expressed his concern regarding the Board of Review process. Quinn commented that he has appealed to the Board of Review in years past. In his 2009 assessment appeal, he chose not to have a hearing at the Board of Review level, questioning its independence from the assessor's

office. Quinn stated that when he has requested a hearing in prior years, he leaves with a sense that the Board of Review gives more weight to information provided by the assessor's office and does not seem to give equal weight to taxpayers' evidence or concerns.

Quinn's testimony highlights concerns also noted by this Board in this appeal. Specifically, but not limited to, the information supplied by the Board of Review in the certified record. The Board of Review provided only two exhibits to this Board. The remaining support for its position comes from the certified record. While Quinn was given a copy of the certified record, it is unclear to this Board what information the Board of Review actually had available when making their decision to deny Quinn's petition. The bulk of information supplied in the certified record was time-stamped September 2009, well after the Board of Review considered this protest in June 2009.

The Board of Review did not call any witnesses or offer any testimony. Although not considered as evidence by this Board, Assistant County Attorney David Hibbard commented in his closing statement that information in the certified record "could have been presented [to the Board of Review], but may not have been – we don't know." We do not accept this statement as representing a fair and equitable process. Attorney Hibbard indicated that the Board of Review would have had the "Board of Review Appraiser Analysis" for the subject property; however, beyond the Appraiser Analysis summary it is unknown what other documents the Board of Review actually possessed/used in its decision-making. We note that this referenced Appraiser's Analysis is in the certified record twice; once with a June 8, 2009 time-stamp, and once with a September 2009 time-stamp. There are no other documents with the June time-stamp in the certified record. It is unreasonable that reliable and accurate records are not kept, and the taxpayer is unaware of what documents the Board of Review possesses when making its decision.

Failing to provide the taxpayer with documentation that was considered by the Board of Review is simply unfair to the taxpayer and belies the equity of the system. Further, while this Board

hears appeals de novo, by including documents in the certified record that may not have been presented to the Board of Review limits the appellants' ability to object to them.

Our requirements are clear. When submitting the certified record, new information should not generally be submitted as part of the Certification. If new information is sent at the same time as the Certification, it should be designated as such. We understand the difficulty in compiling and maintaining records, especially in larger assessment jurisdictions. But this does not excuse the boards of review from having responsibility to the process, and from offering a fair and equitable hearing to the taxpayer of the district. This is echoed in Quinn's testimony when he states "the Board of Review is not an independent body; it is an extension of the assessor's office." Such a disconcerting comment by any property owner should be taken seriously by stewards of the public, and efforts should be made to ensure there is fairness and equitability to the process.

Included in the certified record were five properties selected by the assessor's office as its comparable properties. These properties were laid on a grid and adjusted. All were sales. Additionally, the assessor presented on a grid, but did not adjust, the properties that were used as comparables in the appraisal completed on 819 Oak Park. We are unclear as to what the Board of Review was attempting to demonstrate with the latter display. The Board of Review did not call any witnesses to explain this data, although a representative from the assessor's office, Amy Thorn, was present at the hearing. Declining to offer a ready witness, and an opportunity for Quinn to ask questions in regards to the data presented against his position, indicates an aloofness to the very constituency which all participants in the appeal process serve.

This Board gives little weight to the Board of Review's comparables because, as Quinn pointed out, questions remain regarding the data. Of the four properties submitted as comparable to the subject property, three sold for less than the assessed value. One property submitted by the assessor, located at 3827 3rd Street, was reported as having a sales price of \$90,000 on December 12, 2008. The assessor

failed to indicate that this property had sold only three days later on December 15, 2008, for \$79,000. Certainly a questionable transaction, significantly lower and on the heels of a previous transaction, should have raised flags of concern by anyone analyzing and considering this data. We question which of these sales, if either, represent an arm's length transaction?

Quinn also testified to the number of foreclosed properties in the Oak Park neighborhood. He said foreclosures made it difficult to find sales which would be considered arm's length. Quinn believes the extent of foreclosures in the area indicates foreclosures "set the market," and are thus arm's length transactions. We disagree that they are arm's length as defined by Code; however, an increased rate of foreclosures in a specific area should result in additional scrutiny and increased diligence by assessing officers to ensure assessed values are demonstrative of the market.

The Board of Review asserts it was unable to complete its due diligence to determine market value, as Quinn would not allow an independent appraiser to complete an interior inspection of the property. We reject the premise that the Board of Review can only rely on appraisals with interior inspections. While interior inspections would logically increase the reliability and validity of any analysis, it does not preclude reliable opinions based upon exterior inspections and known information about the property contained within the assessor's records. Had the Board of Review completed an independent appraisal, even with an exterior-only inspection, it is likely that this analysis would have considered the market conditions and foreclosure rate for the subject neighborhood, and implications on value, if any.

The Board of Review's position is greatly diminished in this case given the assessor, on behalf of the Board of Review, did not properly consider these current market conditions, as evidenced by the failure to disclose or analyze a second transaction on one of its comparable properties. The Board provided only two pieces of evidence for consideration: A copy of an email between Quinn and Attorney Hibbard, in which Quinn declines to allow an appraiser on his property; and a copy of a

revolving credit mortgage taken out by Quinn on his property 847 Oak Park Avenue. The amount borrowed on the mortgage agreement was \$64,700.

Because there was no testimony regarding these documents, this Board is left wondering whether the mortgage agreement is intended to reflect the market value of the subject property. Especially considering that this mortgage agreement coincides with Quinn's estimate of roughly \$65,000 as previously explained.

While it would be tempting for this Board to reduce Quinn's assessment to \$65,000, given the mortgage is the only evidence of the potential market value of the subject property, we do not believe it is realistic. We resist the temptation to correct perceived injustices with yet another injustice. It simply does not serve the process in an ethical manner.

There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of demonstrating the assessment is incorrect. § 441.21(3) In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive *and* the correct value of the property. [Emphasis added.] *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The burden is on the taxpayer to prove the correct value of the property.

While Quinn offered significant thought and rationale, the evidence was limited and lacked reliability in support of his opinion that the market value of his property is less than its current assessment. Based upon the foregoing, the Appeal Board finds there is insufficient evidence to support the claim that the subject property is assessed at greater than market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

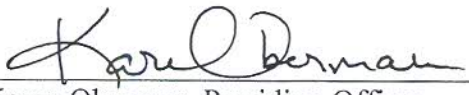
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Quinn did not provide this Board with persuasive evidence that the current assessed valuation is more than authorized by law; he also failed to provide substantial evidence of its fair market value.

In the opinion of the Appeal Board, the evidence does not support the claims brought before this Board. We, therefore, affirm the assessment of the subject property located at 847 Oak Park Avenue, Des Moines, Iowa, as determined by the Polk County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of the James W. Quinn property, located at 847 Oak Park Avenue, Des Moines, Iowa, as of January 1, 2009, set by the Polk County Board of Review, is affirmed.

Dated this 22 day of March, 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

James W. Quinn
847 Oak Park Avenue
Des Moines, Iowa 50313
APPELLANT

David Hibbard
Polk County Attorney
111 Court Avenue, Room 340
Des Moines, Iowa 50309
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-22</u> 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	